

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

651
No. 22,986

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PROCTOR E. BUTLER,
JOHN H. BEAN, Sr.,

and

G. LAWSON CLARK,

v.

ALFRED GOLDSTEIN
FREDERICK M. McCOY
RICHARD L. HARRIS
OLIVER RICHARDSON

Appellant.

Appeal from the United States District Court
for the District of Columbia Circuit

**BRIEF FOR APPELLANT
AND APPENDIX**

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 10 1969

Frederick M. McCoy

FREDERICK M. McCOY, *Pro se*

601 Rhode Island Avenue, N. W.
Washington, D. C. 20001

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AND APPENDIX**

STATEMENT OF ISSUES INVOLVED

The questions raised by this appeal may be stated as follows:

1. Whether the discretion of the trial court was exercised for an erroneous reason?
2. Whether the trial court failed to consider or apply the doctrine of *falsus in uno, falsus in omnibus* in its findings of fact and conclusions of law?
3. Whether fraud was practiced on the trial court through perjured testimony of the appellees?

This case has not been presented before the court.

This is to certify that two books of the foregoing were given to James C. Newton, 1939- 13th Street, N.W., Attorney for Plaintiffs, and Madison McCollough, Asst. Corp. Counsel, D.C. District Building, this 20th day of September, 1969.

FREDERICK M. MCCOY

DEC 56

STATEMENT OF THE CASE

The appellant, Frederick M. McCoy, prosecutes the appeal herein from a final judgment of the United States District Court for the District of Columbia, entered on February 20, 1969 and amended on March 17, 1969.

The time for filing appellant's brief in this Court has been extended to and including August 14, 1969.

The jurisdiction of the Court for this appeal is invoked pursuant to the provisions of Title 28, Section 1291, of the United States Code. This case has never been before this court.

FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW.

The appellees instituted suit in the District Court against the appellant and others seeking declaratory judgment and injunctive relief.

The cause came on for trial in the Court below on Monday, January 13, 1969, at 10:00 o'clock A.M. In order to maintain the issues on the part of the appellees, they called to the witness stand one John Henry Bean, Sr., who, upon being duly sworn, testified substantially as follows (Tr. 10):

That he became an officer of the United Cab Association from its inception in 1961.

That the cab company remained in business until the summer of 1967.

That at that time the president of the cab company told him that he would not be able to continue, and what cars he had in the company he sold them.

That thereupon, he went to the appellant and asked him about running the company or placing some of the cabs he had in the company to bring it up to strength.

That in his conference with the appellant the latter said he had a surplus of cabs which he could put into the fleet and bring it up to strength if the

witness would permit him to operate it. The witness said that would be fine until such time as he retired from the Government Printing Office, when the witness would be able to devote full time and attention to the company.

That as a result of this conference the witness named the appellant as the general manager of the company, with full power and authority to operate and run the company. The witness stated that he was chairman of the Board of Directors of the company. (Tr. 15):

The witness further stated that he wrote in longhand on a piece of paper the foregoing authorization, so that the appellant would be able to issue stickers and collect dues from other members in the company. That thereupon, the witness issued notices to all drivers to get their stickers from the appellant at 6th and Rhode Island Avenue, N. W., and the United Cab Company would be operating from that location from that date on. The witness said he also made it clear to appellant that officers of United Cab Company operating their own cabs were relieved from the payment of company dues. (Tr. 15):

That about 60 or 90 days later, the appellant told the witness that since United cabs were under strength, and since some of the men in the company had gone into other companies, he had not painted any of his cars into the said company, and that since the number of cabs in United had gotten down so low, that it would be necessary for United Drivers to use Crusader cabs, and that in a given time appellant would help the witness to get United back on its feet again. (Tr. 16):

The witness further stated, when asked whether the cab company was ever reactivated under Mr. McCoy's management, that nothing was done until a meeting was held for the company at 1513 "P" Street, N. W. That the meeting consisted of the witness, his son and the proxy for Mrs. Oakcrum. That at the meeting they proceeded to declare all offices vacant and, thereupon, elected Proctor E. Butler, president, G. Lawson Clark, vice president and John H. Bean, Jr., treasurer. That the Minutes of said election was offered in evidence without objection. That the said meeting was held on May 1, 1968, at 11:00 A.M.,

and that it was a meeting of the Board of Directors of the United Cab Association, Inc. (Tr. 19):

The witness further stated that he owned 500 shares of stock for the United Cab Association. The witness then identified the certificate for 500 shares of capital stock of United Cab Association, Inc. The said certificate was then offered in evidence, where the following objections ensued: (Tr. 22):

"Mr. Wright (Counsel for defendant, McCoy): My objection, Your Honor, is that this document offered is unsigned, undated, and bears no corporate seal. I raise the question as to its authenticity."

The trial court ruled that:

"It will be received in evidence for whatever it is."

"Mr. Wright: My objection still stands, but I gather Your Honor has overruled and admitted it."

The witness, thereafter, stated that:

"At no time did I ever assign any stock to Mr. McCoy." (Tr. 23):

On cross-examination the witness stated that the stock certificate, described as plaintiffs' exhibit No. 9, "was issued at the very inception of the corporation." The witness further stated on cross-examination that the meeting at which the 500 shares of stock were issued to him was attended by Mrs. Oakcrum, Al Brown, John H. Bean, Jr. and Logan Hollowell, in January of 1961, at 1513 "P" Street, N. W. (Tr. 27):

That thereupon, the plaintiffs' cause was concluded substantially upon the testimony of the foregoing witness, John H. Bean, Sr.

That thereupon, the defendant, McCoy, through his counsel, moved the trial court for a directed verdict on the theory that the state of the record, gleaned largely from the testimony of said witness Bean, that there were Minutes evidencing the claim that Mr. Bean was elected chairman of the Board of

Directors and that Mrs. Oakcrum was elected Secretary-Treasurer of the said Board of Directors of the United cabs. That the said Minutes reflect only that they were merely elected to such offices for the purpose of a particular meeting. That no authority was vested in said officers to act in such capacity at any future or subsequent meeting. And that any subsequent acts of said officers were void *ab initio*. (Tr. 69):

The trial court sustained defendant's motion on the issue of damages but overruled the said motion on the other issues. That thereafter, defendant, McCoy, testifying in his own defense, stated that he was president and manager of Crusader, Dixie and the United cabs. When asked of his initial contact with Mr. Bean, he stated that he was advised by Mr. Richardson that Mr. Bean, a preacher, was about to lose United Cab Association and wanted help in bringing his Association back to the 20-cab strength. (Tr. 72):

That thereafter and prior to June, 1967, Mr. Bean came in (601 Rhode Island Avenue, N. W.) around 4 or 5 o'clock in the afternoon, at which time the witness, Mr. Bean, Mr. Harris and Mr. Richardson held a conference relative to the status of the United Cab Company. The witness asked Mr. Richardson to "take Minutes" while they talked. That "Mr. Bean said he wanted to get rid of the cab company because he wanted to move it from down there from Short because Short is in the numbers (business) and selling whiskey, and there was a lot of profanity going on, and so I told him that I could put the amount of cabs on that needed to be on the street." (Tr. 81):

Witness McCoy further stated: "So I asked him, how many cabs he had. He said he had 12 or 13. I asked him, 'How are we going to collect the stickers, insurance stickers?' He said, 'I'll tell them all to come to your office beginning next Saturday.'" (Tr. 83):

The witness further stated that: "In the meantime, I said, 'I will call the insurance company and I'll call P.S.C. and notify them and get the propers fixed up that I have taken it over.' He said, 'That will be all right.' So, in the meantime, Mr. Richardson went down to First and Florida Avenue; he

and another man had towed two cars Mr. Bean had down there to keep them from getting tickets. Then, we began to operate the company. I told Mr. Bean to come back to the office Saturday, that I would have a little agreement for him and me to be typed up and signed; and he came back and he signed the agreement we have." (Tr. 84):

The agreement was identified by the witness; also, he identified the signature of Mr. Bean attached to said agreement. The agreement was admitted in evidence. (Tr. 84):

The witness further stated that after the execution of the said agreement in June, 1967, he "immediately contacted Mr. Dan over at (he is president) Kaplan & Crawford Dodge dealers. I called him and asked him, would he assist me in getting these cabs, and he said, 'Yes.' He told me to come down and talk to him about it. Then, I went to P.U.C. and asked for an extension of time because they had sent Mr. Bean and Mr. Short a letter telling them to get off the street. . . . Then I went to Mr. Hollowell and Mr. Al Losakas and informed the insurance company that Mr. Bean had turned over the company to me, and that they would send insurance stickers to 601 Rhode Island Avenue, Northwest. . . . Then I called Mr. Grecco of the Public Service Commission, and I called Mrs. Dawson. She is the one that sent me the certificate of identity so that I could put all the officers in there, and they gave me an extension, I think of 30 days, to try to get the 20 cabs on the street. And I would have gotten the 20 cabs on the street but Mr. Bean, unfortunately, told us something that was not true: that he had 12 or 13 cabs. When we checked with the P.S.C. and the insurance company, we found he had six cabs - 7, with the one he had. That made it almost for me to get the 20 cabs. So, then, I went back to Mr. Avery, who is the chairman of P.S.C., and Mr. Porter, vice chairman, and Mr. Grecco, and we all talked about it. I told them I did not want to lose the color scheme, that I wanted to keep it. They said, 'all right, Mac, we'll hold it in abeyance for a year if you think you can get it.' I showed them where I was on my way to getting the 20 cabs. They said, 'we have got to take it off the street,' so they said,

'we'll hold it for you for a year.' So, then, they sent me a letter stating they would hold it for a year, and I proceeded with trying to get the cabs." Tr. 85-86):

The above testimony, elicited from the principal witnesses, represents substantially the evidence considered by the trial court in arriving at its findings and the entry of its judgment.

At the termination of the trial the District Court Judge stated that: "Accordingly, the court is of the opinion that the plaintiffs are entitled to the relief which they seek, and the reports which they tendered to the superintendent of corporation should be received for filing. I will sign an Order accordingly. I will request counsel for plaintiffs to submit to the court proposed Findings of Fact and Conclusions of Law and a Judgment. . . ." (Tr. 131):

Thereafter, the foregoing were presented and signed by the court and the Judgment entered on January 20, 1969.

That thereafter, an Order amending said Judgment was entered on February 20, 1969.

The said amended Judgment provided that: "The equities in the several taxicabs acquired by the defendants and now titled in the United Cab Association, Inc. are declared to be in the defendants, and said defendants are authorized to take such action as is necessary to transfer title to said taxicabs from the name of United Cab Association, Inc., and the plaintiffs herein shall join in such action as may be appropriate to accomplish this result."

Thereafter and on March 17, 1969, the appellant filed his Notice of Appeal herein, thereby prosecuting this appeal from the errors embodied in the Final Judgment, as amended, on the said 20th day of February, 1969.

ARGUMENT

I. WHERE THE DISCRETION OF THE TRIAL COURT IS EXERCISED FOR AN ERRONEOUS REASON, IT IS REVERSIBLE ERROR

The record disclosed that the findings of fact of the trial court is buttressed on perjured testimony.

It is also disclosed by the affidavit of attorney R. Logan Hollowell, appended to this brief, that no stock was issued to the United Cab Company; that the stock offered in evidence was purchased in Baltimore, Maryland by G. Lawson Clark prior to trial.

It was held in the case of *National Ben. Ins. Co. v. Shaw-Walker Co.*, 71 App. D. C. ___, 111 F.2d 497, that: "Normally, the exercise of the trial court's discretion will not be disturbed on appeal. But it is judicial, not arbitrary. It becomes arbitrary if exercised for an erroneous reason."

In a full explication of the issue here presented, the Supreme Court of Pennsylvania observed and held, in the case of *In Re Masciantonio's Estate*, 396 Pa. 16, 151 A.2d 99, as follows:

"However, we are also mindful that if it appears from a review of the record that there is no evidence to support the court's findings or that there is a capricious disbelief of evidence the court's findings may be set aside. . . The test is not whether we, the appellate court, would have reached the same result had we been acting as the hearing judge who saw and heard the witnesses, but rather whether a judicial mind, on due consideration of the evidence, as a whole, could reasonably have reached the conclusion of the chancellor. . . Such rules of appellate review, however, do not mean that he (the trial judge, sitting as a chancellor) is a law unto himself and that the workings of his conscience cannot be reviewed. On the contrary, the authorities are clear to the effect that his discretion in such cases is — as in all other

cases — not unlimited, and that his decision should be reversed in this court if, in our opinion, the discretion has been abused. . . . Were it otherwise appellate review would be futile and vain.”

It was held in the case of *Wasserstein v. Swern & Co.*, 84 N. J. Super. 1, 200 A.2d 783, that:

“Judicial discretion means legal discretion in the exercise of which the court must take account of the law applicable to the particular circumstances of the case and be governed accordingly. Implicit is conscientious judgment directed by law and reason and looking to a just result. . . . Consequently, if the trial judge misconceives the applicable law or misapplies it to the factual complex, in total effect the exercise of legal discretion lacks a foundation and becomes an arbitrary act. When this occurs it is the duty of the reviewing court to adjudicate the controversy in the light of the applicable law in order a manifest denial of justice be avoided.”

II. THE TRIAL COURT FAILED TO CONSIDER OR APPLY THE DOCTRINE OF *FALSUS IN UNO, FALSUS IN OMNIBUS*

Since it is practically conceded that no shares of stock were ever issued by the United Cab Association, Inc. and the stock certificates offered in evidence were procured in Baltimore, Maryland, in order to mislead the trial court, in this respect the judgment of the trial court is totally void of any consideration of such perjured testimony.

The maxim of *falsus in uno, falsus in omnibus* was discussed at length by this Court in the case of *Wellman v. Blood*, 1 McArthur, Pat. Cas. 432, Fed. Cas. No. 17,385, over 100 years ago, where it was held that the whole testimony of a witness may be rejected by the jury where it is found that he has willfully testified falsely as to a material fact.

Again, in the case of *Alexander v. Blackman*, 26 App. D. C. 541, this Court stated that where a witness testified falsely as to a fact in respect to which he cannot be presumed liable to mistake, courts are bound, upon the principles of law, *falsus in uno, falsus in omnibus*."

In the case of *Arbuckle v. United States*, 79 U.S. App. D. C. 282, 146 F.2d 657, this Court observed that:

"We have, therefore, a case in which the testimony of both defendants and of the prosecution's witness — the only two persons who know the true facts — is shown in important aspects to be untrue and perhaps in these circumstances we should leave the case where we find it. But in refusing to grant a new trial and in imposing sentence, the trial judge, in whose judgment and discretion we have the utmost confidence, suspended execution of the sentence and admitted appellant to probation. It is unthinkable to us that he would have such action unless he considered that there was at least reasonable doubt whether appellant's testimony, in the respect which we have pointed out, was purposely false rather than a mistake of memory. If it was purposely false, appellant's previous good character, which was shown, by reliable witnesses, certainly would not have justified condonation of a deliberate perjury, coupled with a vicious attempt to obstruct the administration of justice. And this must have been the reasoning of the trial judge. Accordingly, we have concluded that our duty is to direct a new trial."

III. WHERE FRAUD IS PRACTICED ON THE TRIAL COURT AND A JUDGMENT RESULTS THEREFROM, SUCH JUDGMENT IS VOID AND WILL BE SET ASIDE AS SUCH

In the case of *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, the Supreme Court of the United States set aside a 12-year old judgment which was fraudulently procured. Mr. Justice Black, speaking for the court, said, among other things that:

"From the beginning there has existed alongside the term rule a rule of equity to the effect that under certain circumstances, one of which is after discovered fraud, relief will be granted against judgments regardless of the term of their entry."

"Litigants who have sought to invoke this equitable power customarily have done so by bills of review or bills in the nature of bills of review, or original proceedings to enjoin enforcement of a judgment. And in cases where courts have exercised the power, the relief granted has taken several forms: setting aside the judgment to permit a new trial, altering the terms of judgment, or restraining the beneficiaries of the judgment from taking any benefit whatever from it. But whatever form the relief has taken in particular cases, the net result in every case has been the same: where the situation has required, the court has, in some manner, devitalized the judgment even though the term at which it was entered had long since passed away."

"Every element of fraud here disclosed demands for exercise of the historic power of equity to set aside fraudulently begotten judgments. This is not simply a case of a judgment obtained with the aid of a witness who, in the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here, even if we consider nothing but Hartford's sworn admission, we find a deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals."

CONCLUSION

In the light of the decisions of the courts hereinabove analyzed, the appellant respectfully urges the court to reverse and remand the judgment below.

Respectfully submitted,

FREDERICK M. McCoy

601 Rhode Island Avenue, N. W.
Washington, D. C. 20001

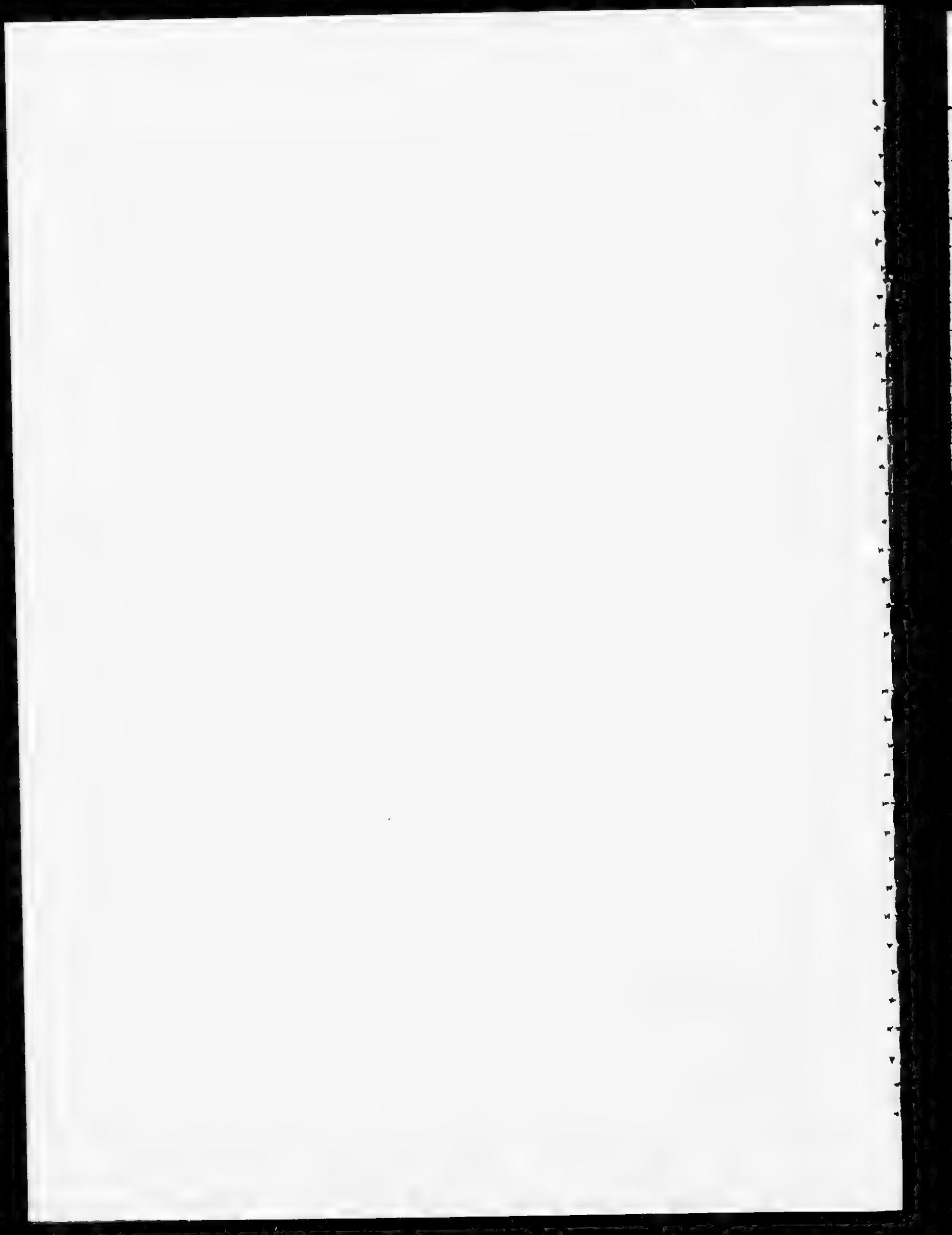
Attorney, pro se



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APPENDIX

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PROCTOR E. BUTLER
JOHN H. BEAN, Sr.
G. LAWSON CLARK,

Plaintiffs,

v.

ALFRED GOLDSTEIN, Superintendent of Corporations
for the District of Columbia

CA 1455-68

FREDERICK M. McCOY
RICHARD L. HARRIS
OLIVER A. RICHARDSON,

Defendants.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Amended Complaint for Declaratory Judgment,
Injunctive Relief and for Damages

Answer and Counterclaim of Defendant
Frederick M. McCoy

Counterclaim of Defendant Frederick M. McCoy

Excerpts from Transcript of Proceedings

Order

Order Amending Final Judgment

Notice of Appeal

**AMENDED COMPLAINT FOR DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF AND FOR DAMAGES**

The complaint of Proctor E. Butler, John H. Bean, Sr., and G. Lawson Clark, evokes the jurisdiction of this Court under Title 29, Section 948 of the D. C. Code, 1961 and follows:

1. That petitioner Proctor E. Butler is a citizen of the United States and a member of the Board of Directors of United Cab Association, Inc., a corporation organized under the laws of the District of Columbia; that John H. Bean, Sr. is a member of the Board of Directors and Vice President of the United Cab Association, Inc.; that G. Lawson Clark is the duly elected Secretary of the United Cab Association, Inc.

2. That Alfred Goldstein is superintendent of corporations for the District of Columbia, and is sued as such; that Frederick M. McCoy, Richard L. Harris and Oliver Richardson are citizens of the United States, resident in the District of Columbia, and putative members and officers of the United Cab Association, Inc.

3. That the United Cab Association was incorporated under the laws of the District of Columbia in February 1961, with John H. Bean, Sr., one of the Directors, as registered agent and sole stockholder, which status he maintained until May, 1968.

4. That in July, 1967, the United Cab Association, Inc. was having difficulty maintaining its cab fleet at the required number of cabs, and its chairman and sole stockholder, John H. Bean, Sr., appointed defendant McCoy as acting business manager upon the condition that the said defendant recruit additional members, with cabs, to build said company fleet up to the required number of cabs.

5. That about August 1967, contrary to his promise to recruit additional members, the said Frederick M. McCoy informed plaintiff Bean that the Public Service Commission of the District of Columbia had refused to extend

the time within which the fleet could be built up and had ruled the said association's cabs off the streets, but did advise that the name, color scheme and cruising light would be reserved to the United Cab Association, Inc. for the period of one year, beginning September, 1967.

6. That thereafter the said Cab Association remained dormant from September, 1967, until May, 1968, at which time the stockholders met to reactivate the association and to elect new members to the Board of Directors, there being present John H. Bean, Sr., and by proxy, Mary Oakcrum and John H. Bean, Jr. That at that time, John H. Bean, Sr., being sole stockholder, cast 500 votes each for Proctor E. Butler, Joseph Gilreath, John H. Bean, Jr., G. Lawson Clark and John H. Bean, Sr., as directors of the corporation. As indicated, see Exhibit A, by reference made a part hereof.

7. Immediately thereafter, the new board of directors convened for the purpose of electing officers and proceeded to elect Proctor E. Butler, President; John H. Bean, Sr., Vice-President and G. Lawson Clark, Secretary.

8. That on May 8, 1968, being ready to meet the requisites for operation, United, through its President, Proctor E. Butler, appeared before the Superintendent of Corporations and tendered for filing, certain corporate reports for 1967 and 1968, as shown by Exhibit B, by reference made a part hereof, with a check covering charges that had accrued against said corporation.

9. That on May 11, 1968, plaintiff Butler was notified by the Superintendent of corporations, that defendant McCoy, had also tendered for filing corporate reports for the same corporation asserting his ownership or rights to said corporation, whereupon the Superintendent refused to file either set of reports tendered for filing until a proper determination as to the proper persons to so file.

10. That plaintiffs are now ready to operate and have invested heavily in order to bring the association up to fleet requirements.

11. That under the circumstances above set forth the plaintiffs are without a plain and adequate remedy at law, and have suffered and will continue to suffer irreparable injuries, damages and losses by reason of the unlawful action of the defendants.

WHEREFORE, the premises considered, plaintiffs pray:

1. For a declaratory judgment declaring Proctor E. Butler, John H. Bean, Sr., G. Lawson Clark, Joseph Gilreath and John H. Bean, Jr., as rightful owners and officers of the United Cab Association, Inc.

2. That an order issue from this Court directing the Superintendent of Corporations for the District of Columbia, to file the papers that have been proffered by Proctor E. Butler, as the duly elected President of the United Cab Association, Inc.

3. That a temporary restraining order and/or a preliminary injunction be entered herein, restraining and/or enjoining Frederick M. McCoy, Richard L. Harris and Oliver Richardson, or either of them, from interfering with, conducting business as, claiming or holding themselves out as owners, agents, officers or directors of United Cab Association, Inc.

4. That \$100.00 per day be assessed as damages against the defendant, and each of them, from May 11, 1968.

5. For such other and further relief as to the Court may seem just and proper.

/s/ James C. Newton
Attorney for Plaintiffs
1939 - 13th St., N. W.

/s/ Proctor E. Butler
/s/ John H. Bean, Sr.
/s/ G. Lawson Clark

[Jurat]

**ANSWER AND COUNTERCLAIM OF DEFENDANT
FREDERICK M. McCOY**

Comes now the defendant, Frederick M. McCoy, for answer to the complaint filed herein heretofore, and answering the same, he denies, admits and avoids, as follows:

1. Defendant admits so much of the averments appearing in paragraph 1 of the complaint, as referring to the citizenships of the plaintiffs, but he denies the remaining allegations embodied in said paragraph.

2. Defendant admits the allegations of paragraph 2 of the complaint, save and except the allegation which describes him as a "putative" Member and Officer of the United Cab Association, Inc., and as to the latter this defendant states that he was elected President of the said Corporation, at a regularly held corporate meeting, on January 23, 1967.

3. This defendant admits that the United Cab Association was organized in February of 1961, as instrument No. 611521, and that the incorporators and members of the Board of Directors were identical to-wit: John H. Bean, Mary P. Oakcrum and Harold Brown. This defendant further states that the said corporation was authorized to issue and did issue 500 shares of stock of a single series without par value. This defendant is without knowledge of plaintiff, John H. Bean, Sr., being the sole stockholder, and can neither deny nor affirm the same.

4. This defendant admits so much of paragraph 4 of the complaint which alleges that "in July 1967, the United Cab Association, Inc., was having difficulty maintaining its cab fleet at the required number of cabs," but, denies the remaining allegations of said paragraph. And in further answering this defendant states that on June 23, 1967, a meeting of the United Cab Association, Inc. was held at the Crusader Cab Association, 601 Rhode Island Avenue, N. W., whereupon it was agreed, after full discussion, that the plaintiff, John H. Bean, Sr. would transfer the United Cab Association, Inc. to defendant, Frederick M. McCoy and the latter consented to take the said cab

company over with the understanding that all books and records of the said cab company would be turned over promptly to him and that 100 shares of stock, allegedly belonged to plaintiff, Bean, would likewise be transferred to this defendant. That the consideration for the transfer of the said stock and scheme was the exemption of plaintiff, Bean, from the payment of dues as long as he remained in the said cab association or the Crusader Cab Association. That a photocopy of the minutes of said meeting is attached hereto, as defendant's exhibit "A" and made a part hereof by reference.

5. This defendant denies the allegations embodied in paragraph 5 of the complaint, and in further answering he states that at the time described in paragraph 4 above, plaintiff, Bean, represented to this defendant that there were 11 United Cabs in operation; however, when this defendant took over the said cab company he discovered that there were only 6 of such cabs in operation and because of this misrepresentation he found it impossible to procure 14 instead of 9 such cabs within the limited time remaining, whereupon, he reported the same to the Public Service Commission, D. C. and was accordingly directed by the said Commission to remove the color scheme and insignia from all United Cabs by Saturday, September 30, 1967, and extending the time for compliance for a period of one year. A photocopy of the Public Service Commission's directive is attached hereto as defendant's exhibit "B" and made a part hereof by reference.

6. This defendant is without knowledge of the allegations appearing in paragraph 6 of the complaint and by reason thereof he can neither deny nor affirm the same. In further answering this defendant states that any such action taken as alleged therein was without authority and void *ab initio*.

7. This defendant incorporates by reference therein the allegations appearing in paragraph 6 above.

8. This defendant adopts by reference herein the allegations appearing in paragraph 6 above.

9. This defendant admits the allegations appearing in paragraph 9 of the complaint.

10. This defendant denies the allegations appearing on page 3 of the complaint which the plaintiffs mistakenly describes as (9).

11. This defendant further answering states that the complaint fails to state a claim upon which the Relief sought can be granted. Wherefore, this defendant demands that the complaint be dismissed, and prayers therein be denied with costs assessed against plaintiffs.

/s/ Frederick M. McCoy
Defendant

**COUNTERCLAIM OF DEFENDANT
FREDERICK M. McCOY**

COUNT ONE

1. The jurisdiction of the Court is invoked pursuant to the provisions of Section 11-521 of the D. C. Code, 1967 Edition, and Rule 13 of the Federal Rules of Civil Procedure.

(a) that hereinafter the defendant, Frederick M. McCoy shall be referred to as the counter-claimant, and the plaintiff, John H. Bean, Sr., shall be referred to as the counter-defendant.

(b) the counter-claimant adopts by reference all of the pertinent allegations appearing in defendant's answer hereinabove.

2. That heretofore, to-wit; on January 23, 1967, the counter-claimant and the counter-defendant entered into an agreement for the sale and transfer of the assets of the United Cab Association, Inc., an *alter ego* corporation of the counter-defendant, from the latter to the counter-claimant.

3. That thereafter and pursuant to said agreement the counter-claimant proceeded to effectuate constructive plans and processing data in order to implement and restore the 20-cab fleet minimum required by the Public Service Commission, D. C., and as a result of the said efforts of the counter-claimant he procured the assurance of the former for an extension of one year in which to rehabilitate the United Cab Association, Inc. and to comply with the said 20-cab fleet minimum requirement. That in this respect the counter-claimant adopts by reference herein defendant's exhibits "A" and "B" attached to his answer hereinabove.

4. That thereafter and in consequence of the aforesaid agreement the counter-claimant succeeded in procuring the necessary implementation of cabs to meet the said 20-cab minimum requirement of the Public Service Commission, D. C., and thereupon, he proceeded to file the necessary papers and to take the necessary action to restore the color scheme and insignia to the United Cab Association, Inc. and to restore its cabs to street operation.

5. That notwithstanding the foregoing and in a deliberate breach of the said agreement, the counter-defendant designedly disregarded and ignored the aforesaid agreement and proceeded to do, and to cause to be done, the acts and things alleged in paragraphs 6, 7 and 8 of the plaintiffs' complaint, which said allegations are adopted herein by reference, for the sole purpose of showing the breach of agreement by the counter-defendant.

6. That as a result of the said breach of agreement and by reason thereof, the counter-claimant has suffered damages in the sum of \$25,000.00.

WHEREFORE, counter-claimant, Frederick M. McCoy, demands judgment against the counter-defendant, John H. Bean, Sr., in the sum of \$25,000.00, besides costs.

/s/ Frederick M. McCoy

COUNT TWO

The counter-claimant, Frederick M. McCoy, further sues Proctor E. Butler and G. Lawson Clark, both of whom, are hereinafter referred to as counter-defendants, and for cause of action the counter-claimant alleges:

7. The counter-claimant adopts by reference all of the pertinent allegations appearing in count one above.

(a) the said counter-defendants are sued herein as parties who knowingly and deliberately interfered with the contractual rights of the counter-claimant and inducing the counter-defendant, John H. Bean, Sr., to breach his agreement with the counter-claimant.

8. That heretofore, and during the month of May, 1968, the counter-defendants, well knowing the existence of the said contractual relationship between the counter-defendant, John H. Bean, Sr. and the counter-claimant, and with full knowledge of the services rendered by the counter-claimant, as alleged hereinabove, did wrongfully, wilfully and maliciously advise, counsel and induce the said John H. Bean, Sr. to abandon his said agreement with the counter-claimant, and to breach the same, without the knowledge or consent of the counter-claimant. That as a result thereof the counter-defendants did the acts and things alleged in paragraphs 6, 7 and 8 of plaintiff's complaint herein, which said allegations are adopted herein by reference, solely for the purpose of stating the known participation of the counter-defendants in so inducing the said John H. Bean, Sr. to abandon his agreement with the counter-claimant.

9. That as a result of the foregoing and by reason of the fact that the counter-defendants knowingly induced the said John H. Bean, Sr. to abandon, violate, repudiate and break his said agreement with the counter-claimant, the latter has suffered damages in the aggregate sum of \$50,000.00.

WHEREFORE, the counter-claimant, Frederick M. McCoy, demands judgment against the counter-defendants, Proctor E. Butler and G. Lawson Clark, and each of them, in the sum of \$25,000.00 as compensatory damages, besides costs.

WHEREFORE, the said counter-claimant demands judgment against the said counter-defendants, and each of them, in the sum of \$25,000.00 as punitive damages, besides costs.

/s/ Frederick M. McCoy
Counter-Claimant
601 Rhode Island Avenue, N. W.
Washington, D. C. 20001

[Jurat]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

Washington, D. C.
Monday, January 13, 1969

The above-entitled cause came on before the Honorable JOSEPH C. MC-GARRAGHY, a judge in the United States District Court, at 10:00 a.m. on January 13, 1969.

PROCEEDINGS

JOHN HENRY BEAN, Sr.

was called as a witness in behalf of plaintiffs, and having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NEWTON:

Q. Will you please state your full name and address to the Court and to counsel? A. John Henry Bean, Sr., 3635 Highwood Drive, Southeast, Washington, D. C.

Q. Mr. Bean, are you a member of the United Cab Association, that is, so far as being an officer is concerned? A. Yes.

Q. When did you become such an officer of the United Cab Association?

A. From the very inception of the said cab company.

Q. In what year was that? A. About 1961.

Q. At the time of the organization of the cab company, did you stay in business constantly from that time? A. Up until the summer of 1967.

Q. At that time, what happened? A. Well, I had been in an accident and the president told me that due to other business reasons, he would not be
11 able to continue, and what cars he had in the company, he sold them. Some of them had been wrecked and what-have-you, and I went to Mr. McCoy and asked him about running the company or placing some of the cabs he had in the company to bring it up to strength.

Q. All right. Now, I wish to show you this. Do you recognize it? Would you identify that? A. Yes. This is the minutes of the meeting of the Cab Association.

Q. When is it dated? A. Dated February 14, 1961.

Q. So, you were then in operation as of February 14, 1961, that is, as a corporation? A. Yes.

MR. NEWTON: If Your Honor please, I would like to have it marked.

THE CLERK: Do you want these marked collectively?

MR. NEWTON: May I have this marked, too. This is the Charter, first charter that was issued.

THE CLERK: Plaintiff's No. 1 for identification.

(Plaintiff's Exhibit No. 1 marked for identification.)

THE COURT: Are you offering it in evidence?

MR. NEWTON: Not right at this moment, Your Honor.

THE CLERK: Plaintiff's No. 2 marked for identification.

12 (Plaintiff's No. 2 marked for identification.)

(Counsel checking exhibits.)

MR. NEWTON: Now, Your Honor, I would like to offer these in evidence, please.

THE COURT: Any objections?

MR. WRIGHT: No objection.

THE COURT: Without objection, they will be received.

CLERK: Plaintiff's Exhibits 1 and 2 received into evidence.

(Plaintiff's 1 and 2 received.)

BY MR. NEWTON:

Q. Mr. Bean, at the time that you contacted Mr. McCoy, what conversation took place between yourself and Mr. McCoy? A. Mr. McCoy had just returned from the hospital, from a heart condition, and we set there in his office, and he and I had a discussion. He said, "I have just taken over the operation of Dixie Cab Company," he said, "and I have a surplus number of cabs that I could put into the fleet and bring it up to strength if you permit me to operate it."

I said, "Well, I have been in an accident and I am only working four hours a day." I said, "That would be fine until such time I contemplated retiring from the government; then I will be able to devote my full time and attention to the company."

13 Q. As a result of that, what position, if any, did you assign to Mr. McCoy? What title for the purpose of his operating the company? A. That was General Manager, with full authority to operate and run the company.

Q. All right.

THE COURT: Let me ask you this: What was your position in the company?

THE WITNESS: Chairman.

THE COURT: Chairman of the Board of Directors?

THE WITNESS: Yes, sir.

BY MR. NEWTON:

Q. Just prior to that time, who had been the designated president of the company? A. Mr. Elroy Short had been the past president.

Q. Was Mr. Elroy Short then engaged in his capacity of operating the company? A. Mr. Short came to me and asked to be removed as president due to other business commitments and told me he would no longer run the company for me.

Q. I show you this letter dated June 16, 1967 and ask you, can you identify that letter? A. Yes. This is a letter that Mr. Short gave me from the Public Service Commission.

14 Q. That was addressed to him. Had he withdrawn at that time?

A. He gave me that just after he had withdrawn. That letter came to him after he had withdrawn.

MR. NEWTON: Your Honor, I should like to have this marked as an exhibit.

THE COURT: Give it to the Clerk.

MR. NEWTON: It has been already before the pre-trial examiner at which we agreed this could be offered without contest.

THE CLERK: Exhibit No. 3 marked for identification.

THE COURT: Are you offering it in evidence, Mr. Newton?

MR. NEWTON: Yes, I do offer it in evidence.

MR. McCULLOCH: No objection.

MR. WRIGHT: May I inspect it for just a moment, if Your Honor please?

THE COURT: Yes, you may see it.

MR. WRIGHT: I have no objection.

THE COURT: Without objection, it will be received.

(Plaintiff's Exhibit No. 3 was marked for identification and received in evidence.)

BY MR. NEWTON:

Q. Mr. Bean, who was president at the time of the meeting between yourself and Mr. McCoy?

15 A. Just Mr. McCoy and myself.

Q. Where did it take place? A. We sit there in his cab office, right there at 6th and Rhode Island Avenue. There were other people in the building, but we were the only ones in the discussion.

Q. At the time of your conference with Mr. McCoy, were there any papers signed between you, setting forth your agreement? A. In longhand I took pen and paper and just wrote out in longhand on a piece of paper, so he would be able to issue stickers and collect the dues from other members would be able to issue stickers and collect the dues from other members in the company.

Q. And there was nothing said, nothing signed giving Mr. McCoy the company? A. No, not giving him the company, never.

Q. Or assigning him as an officer of the company other than General Manager? A. That's all, just as General Manager.

Q. That was approximately June of 1967? A. Yes, as near as I can recall, that's the time.

Q. What did the company do, or what was done with respect to the company, and when was it done immediately, to carry out your agreement?

A. I issued notices to all drivers to get their stickers from 6th and Rhode
16 Island Avenue, and told them that we would be operating from there, from that date on. And Mr. McCoy, I also told him, I said, "Now, I want you to understand, you tell your people, where we are issuing stickers, that it is incorporated in the minutes of the cab company that officers in the company do not pay dues for the cab that they are operating themselves." I said, "That has been incorporated into the minutes of the company sometimes so whenever I should come here to get my sticker, people will know that as an officer, I am not required to pay dues."

There came a time later when Mr. McCoy told me he had been advised that since we were under strength -- about 60 to 90 days later -- he had not painted any of his cars into the company, and some of the men that were in the company had gone and united with other companies, and the company had gotten down so low that he told me that it would be necessary for us, for a period of time, to just use his cab company, which was Crusader, and that in a given time then, he would be able to help me and we would all get United back on its feet again.

Q. All right. Now, was the cab company ever reactivated under Mr. McCoy's management? A. Nothing was done until we had a meeting at our usual place of holding the meeting for the cab company, which was the 1500 block of P Street, Northwest.

17 Q. Who was "We?" A. Myself and my son and the proxy -- Miss Oakcrum could not attend. She issued for us to be there and hold the meeting, where we proceeded to declare offices vacant and elected new officers.

Q. At that meeting, what officers were elected? A. There were elected president, vice-president, and a treasurer.

Q. Would you please name them? A. Mr. Proctor Butler was president; Mr. G. Lawson Clark and John H. Bean, Jr.

THE COURT: Do you have the minutes of that meeting?

MR. NEWTON: Yes, Your Honor.

BY MR. NEWTON:

Q. Would you please identify these? A. (Reading)

MR. NEWTON: If Your Honor please, these are the minutes of the stockholders meeting and —

CLERK: Plaintiff's Exhibit No. 4 marked for identification.

MR. NEWTON: And this is the election of the Board of Directors and certification.

THE CLERK: Plaintiff's Exhibit No. 5 marked for identification.

18 (Plaintiff's Exhibits Nos. 4 and 5 marked for identification.)

MR. NEWTON: Your Honor, I wish to offer Plaintiff's Exhibits 4 and 5 into evidence.

MR. McCULLOCH: No objection.

MR. WRIGHT: No objection.

THE COURT: They will be received.

(Plaintiff's Exhibits 4 and 5 received into evidence.)

BY MR. NEWTON:

Q. Would you please state the date of the meetings of this corporation in accordance with those minutes? A. First day of May 1968, 11:00 a.m.

Q. That was the meeting of what group? A. This is the meeting of the Board of Directors of the United Cab Association, Inc.

Q. And at that time, you did select Mr. Butler as the president of the corporation? A. That was done in our stockholders' meeting.

Q. Oh, yes, I see. Where was that meeting held? A. That meeting was held 1513 P Street, Northwest, in the office of Columbia Mutual Insurance Company.

Q. Was that the place you held all the meetings of the company?

A. That's right.

19 Q. Was any meetings ever held anywhere else? A. No, no official meetings.

MR. NEWTON: All right. I wish to offer these in evidence, Your Honor.

BY MR. NEWTON:

Q. As a result of that meeting, Mr. Bean, did you authorize Mr. Butler as president of the company to file certain reports for the corporation?

A. I did.

Q. I want to have you to identify those. A. That's right. This is my signature (indicating).

Q. And this one? A. That is correct.

Q. What are these? A. Those are the documents to be filed with the corporation, down at the Recorder of Deeds' Office, Certificate of Incorporation and annual reports.

MR. NEWTON: Your Honor, I would like to offer these exhibits in evidence — at least one each. They are in duplicates, and I would like to retain the original copy, please.

THE COURT: They may be given the next number for identification.

THE CLERK: Plaintiff's Numbers 6 and 7 marked for identification.

20 (Plaintiff's Numbers 6 and 7 marked for identification.)

THE COURT: Have you gentlemen seen these papers?

MR. McCULLOCH: I have not.

MR. WRIGHT: No, sir.

MR. NEWTON: If the Court pleases, I wish to withdraw these specific ones. I understand the originals were never returned. They are in the office of the Superintendent, and counsel for the Superintendent has a copy of the originals that were filed with them. So, may we withdraw these? It has Mr. Butler's name on it, and in fact, it has Mr. Bean's name on it. In fact, Mr. Butler's name is on the originals that were filed.

THE COURT: Then, you're not offering these in evidence?

MR. NEWTON: That's right. I wish to withdraw them. May I ask the Court's indulgence, please?

Now, Your Honor, I would like to offer these, which are the correct copies, in evidence.

THE COURT: They may be given the next number, please.

THE CLERK: Plaintiff's Exhibit No. 8 marked for identification.

(Plaintiff's Exhibit 8 marked for identification.)

21 THE COURT: Do you have any objection to these?

MR. McCULLOCH: No.

THE COURT: Without objection, they will be received.

(Plaintiff's Exhibit 8 was received into evidence.)

BY MR. NEWTON:

Q. Mr. Bean, from May 8, 1967, or shortly thereafter, were you advised, or did you receive any advice from the Superintendent of Corporations?

A. I sent down a copy by my son, as well as through my attorney, and that's when I was informed that there had already been two copies filed, and that they were not going to act on either copy, that it would have to go through Court, and that's why I questioned, because the record would show that I was the legal representative, as a matter of record in the (Superintendent of Corporations) Corporation Counsel's Office. I was the registered agent listed there and so that is why we are here.

BY MR. NEWTON:

Q. Now, I believe, Mr. Butler [sic], that you indicated that you were the sole stockholder of the Corporation, is that true? A. I owned 500 shares of stock for the United Cab Association.

Q. Would you please indicate what this is?

22 A. This is the certificate for 500 shares of capital stock of United Cab Association, Inc.

MR. NEWTON: Your Honor, I would like to introduce this, and I would like at the same time to reserve the right to have this back, if I may.

THE COURT: It will have to be with the Court in the course of the trial. You can get it back afterwards.

MR. NEWTON: Yes. I just wanted to reserve the right to get it back after the trial.

THE COURT: Yes. Give it the next number.

THE CLERK: Plaintiff's Exhibit No. 9 marked for identification.

(Plaintiff's Exhibit No. 9 marked for identification.)

THE COURT: Is there any objection to this exhibit?

MR. McCULLOCH: No objection. I have no objection.

MR. WRIGHT: My objection, Your Honor, is that this document offered is unsigned, undated, and bears no corporate seal. I raise the question as to its authenticity.

MR. McCULLOCH: Your Honor, the only objection — I would not object to this being introduced in evidence as a document which has the United Cab Association name on it, the number, 500 shares, of common stock, and that's all that's written on the stock. I would accept it for that only.

23 THE COURT: It will be received in evidence for whatever it is.

(Plaintiff's Exhibit 9 received into evidence.)

Mr. Wright.

MR. WRIGHT: My objection still stands, but I gather Your Honor has overruled and admitted it.

THE COURT: Do I understand it does not bear any signature of any officer?

MR. NEWTON: It does not.

THE COURT: Nor does it have the corporate seal on it? Nor does it have the date, is that correct?

MR. NEWTON: That's right.

THE COURT: It's received.

MR. NEWTON: It is just indicative of the number of shares that there were and that Mr. Bean was the holder.

BY MR. NEWTON:

Q. Mr. Bean, as the sole stockholder of the corporation, did you ever agree to assign, or did you ever assign any of the stock of the United Cab Company to Mr. McCoy? A. At no time did I ever assign any stock to Mr. McCoy.

Q. At what other time, other than those you have testified to, if any, did you consult with Mr. McCoy on the condition of the cab company?

24 A. Only on one other occasion that Mr. McCoy mentioned the cab company to me, and that was the time he told me that for a short period of time, we would have to go under the colors of Crusader until such time as we could get enough cars to get back on the street, and Mr. McCoy has never mentioned the company to me, not one time since.

Q. Is it my understanding that you were given an alternative, that is, to put the cab company in Crusader? A. No, we wasn't given no alternative to that. That was just Mr. McCoy's suggestion that while we were waiting to get enough cabs together, that we would just use them under his color scheme, so all we would have to do is just — the only difference is between a red band and a green band — He said, "All we have to do is paint a green band where a red band had been." Only give us 20 days to do it. Only thing we have to do is put a green band on them and change the name.

Q. But that never happened actually? A. No.

Q. So, the United Cab Association, then, was completely off the street, is that right? A. That's right.

Q. And it was never put back on from — never qualified? A. That's right.

Q. And so it remained off the street until the present time?

25 A. That's right.

MR. NEWTON: That's all, Your Honor. You may inquire.

* * * * *

81

FREDERICK M. MCCOY,

one of the defendants herein, was called as a witness in his own behalf, and having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q. Would you give your name, please, sir. A. My name is Frederick M. McCoy.

Q. What is your address, Mr. McCoy? A. 601 Rhode Island, Northwest, business.

Q. What is your business, occupation? A. President and Manager of Crusader and Dixie and the United Cab.

Q. How long have you been in, let's say, the cab business?

82 A. Approximately 20 years.

Q. Directing your attention to sometime in May of 1967, did there come a time when it was called to your attention by Mr. Richardson that there was some trouble in connection with the maintenance of United Cab Association?

A. Yes, sir.

Q. Can you fix approximately what part of May that was? A. I don't know the exact date, but I came out of the hospital about May - two months before, I think it was two months before June, and Mr. Richardson called me at home and told me that Mr. Bean, a preacher, was by this evening. First, he said he was a preacher. I didn't know of any preacher; he said, "You know, Mr. Bean." I said I didn't know Mr. Bean was a preacher. He said, "Oh, yes." He said, "He's about to lose United Cab Association and he wants to see if you can get the twenty cabs." I said, "What do you think about it?" He said, "We can try. I will help you get 'em." He said, "I'll call him back. I have his card. Call him back and have him meet you down there the next day."

So, the following day, around 4 or 5 o'clock, if I remember correctly, Mr. Bean came in.

Q. When you say "came in," at what location? A. In the office at 601 Rhode Island Avenue.

83 Q. Did you have a conversation with Mr. Bean at that time about the status of United Cab Association? A. Mr. Bean, Mr. Harris and myself were in the office, with the partition between: This side (indicating) is where members of the cab company come in and on this side (indicating) was my office. At that time, Mr. Bean came in. Mr. Harris was standing in there. Mr. Richardson was sitting behind the desk. I was sitting at another desk and we began to talk about the company, and I told Mr. Richardson, "Take minutes" as we talked. Mr. Bean said he wanted to get rid of the cab company because he wanted to move it down there from Short because Short is in the

numbers and selling whiskey, and there was a lot of profanity going on, and so I told him that I could put the amount of cabs on that needed to be on the street.

So, I asked him how many cabs he had. He said he had 12 or 13. I asked him, "How are we going to collect the stickers, insurance stickers?" He said, "I'll tell them all to come to your office beginning next Saturday." I don't know what date it was, but the next Saturday they were supposed to come there.

In the meantime, I said, "I will call the insurance company and I'll call P.S.C. and notify them and get the proper papers fixed up that I have taken it over."

84 He said, "That will be all right."

So, in the meantime, Mr. Richardson went down to First and Florida Avenue — he and another man — had towed two cars Mr. Bean had down there to keep them from getting tickets. Then, we began to operate the company. I told Mr. Bean to come back to the office Saturday, that I would have a little agreement for him and I to be typed up and sign; and he came back and he signed the agreement we have.

Q. Let me show you this which has been marked as Defendant's Exhibit No. 1 for identification and ask you to examine that document, please.

A. Yes, this is the agreement that Mr. Bean and I drew up.

Q. When was that agreement drawn? A. That was in June. I thought maybe the young lady put the date on, but she did not. It was June 1967.

Q. In addition to you and Mr. Bean being present at the time it was executed, was anybody else there? A. The lady that was working there, name of Mrs. Thelma Louis. I tried to find her. She was working for me. I can't find her.

Q. Did Mr. Bean sign it? A. Yes, sir.

Q. That's his signature? A. That's his signature.

85 Q. Did you have any particular discussion about what was to go in there before it was finally drawn up and signed? Did you talk to him about what

was in there? A. Yes. He said he didn't want to have anything to do with the company, that he wanted to turn all the books and everything over to me.

Q. Did he ever return any books and documents relating to United Cab Association over to you? A. No. I have called and written him, and he never did come up with them.

Q. Did he tell you whether he knew the physical location of these books and ledgers? A. He said he had them. That's all he said: "He had them."

Q. After this agreement was signed and executed —

MR. NEWTON: If Your Honor please, I wanted to inquire whether he is going to offer that in evidence?

THE COURT: I assume he is.

MR. WRIGHT: Yes.

BY MR. WRIGHT:

Q. After this agreement was signed and executed, what, if anything, did you do to get the cab company up to the 20 as was required by the Public Service regulations? A. I immediately contacted Mr. Dan over at — he is president of Kaplan & Crawford Dodge dealers. I called him and asked him, 86 would he assist me in getting these cabs, and he said, "Yes." He told me to come down and talk to him about it. Then, I went to P.U.C. and asked for an extension of time because they had sent Mr. Bean and Mr. Short a letter telling them to get off the street.

THE COURT: Gentlemen, can I suspend for just a moment? I will be back very shortly.

(Brief recess.)

THE COURT: You may resume, Mr. Wright.

BY MR. WRIGHT:

Q. I believe you were telling the Court, Mr. McCoy, what your actions were in an effort to revitalize this company after execution of Defendant's Exhibit No. 1 for identification. A. I think I stated about Kaplan & Crawford. Then, I went to, informed the insurance company, Mr. Hollowell and Mr. Al Losakas (phonetic) that Mr. Bean had turned over the company to me, and that they would send insurance stickers to 601 Rhode Island, Northwest.

Q. Were insurance stickers sent to your office for United Cab? A. Yes, sir. I have the papers where they were sent. Then, I called Mr. Grecco, of Public Service Commission, and I called Mrs. Dawson. She is the one that sent me the Certificate of Identity, so that I could put all the officers in there, and
87 they gave me an extension, I think, of 30 days, to try to get the 20 cabs on the street. And I would have gotten the 20 cabs on the street, but Mr. Bean, unfortunately, told us something that was not true: that he had 13 or 12 cabs, and when we checked down the P.S.C. and the insurance company, we found that he had six cabs - 7, with the one he had. That made it almost impossible for me to get the 20 cabs. So, then, I went back to Mr. Avery, who is the Chairman of P.S.C. and Mr. Porter, vice-chairman, and Mr. Grecco, and we all talked about it. I told them I did not want to lose the color scheme, that I wanted to keep it. They said, "All right, Mac. We'll hold it in abeyance for a year, if you think you can get it." I showed them where I was on my way to getting the 20 cabs.

They said, "We have got to take it off the street, " so they said, "We'll hold it for you for a year." So, then, they sent me a letter stating they would hold it for a year, and I proceeded on trying to get the cabs.

THE COURT: Let me ask you a question: Is your desire to keep control of United due to your desire to maintain control of the color scheme?

THE WITNESS: Well, I stand to lose - I don't know how to do this. I got about 18 cabs in the United name when I bought from Kaplan and Crawford with the expectation of getting the 20 and putting them back on
88 the street. So, I got these cabs in the name of United Cab, trading as Crusader Cab Association, Inc.; and if I have to give up the United Cab, it would work a hardship on me. I would have to go through inspection. I would have to pay taxes, 4 percent taxes of the cabs, what they are worth, and that would cost a lot of money. Of course, if I could get by that I wouldn't want United Cab, I would want the color scheme.

THE COURT: When was this action taken, whereby United undertook to trade as Crusader?

THE WITNESS: When did it happen?

THE COURT: Yes.

THE WITNESS: Shortly after Mr. Porter informed me I had to take the cabs off the street.

THE COURT: Who did that?

THE WITNESS: P.S.C.

THE COURT: Who decided they would start to operate it under the name of Crusader?

THE WITNESS: We could do that, was doing that; when Mr. Bean brought it to us, we started doing it. We started doing it in order to try to get the 20 cabs. After we found we couldn't get the 20 cabs, we painted them in Crusader's —

THE COURT: Go ahead.

BY MR. WRIGHT:

Q. I think you were further explaining to the Court your action in terms
89 of trying to meet the P.S.C. regulations. A. After we had started putting cabs in the United Cab Company, and we discovered we had six — Mr. Brown had let me have six or seven cabs — and after we found Mr. Bean didn't have but six cabs, and it was impossible to get 20 cabs within the 30-day time limit, Mr. Richardson and I decided to put them in Crusader.

Q. At any time from June of 1967 when Mr. Bean had discussions with you and he executed Defendant's Exhibit No. 1 for identification, did he complain to you about the lack of your efforts in terms of revitalizing — A. He had no right —

THE COURT: That's not the question.

THE WITNESS: No, he didn't.

BY MR. WRIGHT:

Q. Did you know anything about Mr. Butler and Clark being associated with him in any way in United before May of 1968? A. No, I did not. I would like to explain that.

Q. When did it come to your attention? A. Mr. Butler and Mr. Clark was members of my organization, which is Crusader Cab Company, and they, like all cab drivers, hung around the office all the time, and I actually call

them parasites. They stayed there and they didn't know Mr. Bean; to the best of my knowledge they did not know Mr. Bean. Mr. Bean didn't hang around
90-91 there. He only came in on Saturday to get insurance stickers.

But Mr. Bean had a son who purchased a car from Mr. Gil Reese, and his son used to come by there two and three times a day sometimes, so he got acquainted with Mr. Butler and Mr. Clark; and Mr. Clark being ambitious as he were, he asked Mr. Bean's son about the United Cab.

THE COURT: Do you know that?

THE WITNESS: Yes, sir.

THE COURT: Did you hear him ask him?

THE WITNESS: Yes, sir, I heard that. They all was right out there. Every day around 12 or 1 o'clock, they was always out there.

Anyway, I didn't pay any attention. Mr. Butler came to me and he wanted to buy the United Cab, and I thought at the time we were going to — I said, "We'll talk about it." And one day he came in the office and wanted to talk to me about it. And so we set down there and started talking about it. He said, "I want to take the United Cab Company from you. We operate it here. If you don't want to give it to me, I'll take it anyway. I already bought it."

BY MR. WRIGHT:

Q. Tell me why he would come to you for the purchase? Do you know a reason for that? A. He knew I had an agreement with Mr. Bean about the company, so Mr. Bean told him he had the 500 shares of stock, and so
92 he could deliver to him for \$500.

So, then, Mr. Butler came to me and told me, he said, "Otherwise if you want to give it to me peacefully, if you don't want to, I'll take it anyway because I already paid \$500 for it."

I said, "Let me get on the phone and see if you have got it." I called Mr. Grecco. Mr. Grecco said Mr. Hollowell had called. I said, "Why had Mr. Hollowell called?" He said, "Bean didn't want United Cab. I told him you said . . ." we would give it to you . . . extended."

I called Mr. Hollowell. Mr. Hollowell said he did not know I had it. He said he was just going along with him at the meeting. From then on, that's

the way it went.

Q. Let me ask you: At any time prior to this trial had you seen any books or ledgers or documents or records belonging to United Cab Association?

A. No, I had not.

Q. (continuing) — other than those that you prepared? A. No.

MR. WRIGHT: I would like to offer Defendant's Exhibit No. 1 for identification.

THE COURT: You are offering it in evidence?

MR. WRIGHT: Yes.

93 MR. NEWTON: May I see it please?

(Mr. Newton examined document.)

MR. NEWTON: I do object to this, your Honor. Mr. Bean has testified that this is not his signature and, of course, this is not even filled in. It carries no other name although it purports to be an agreement, and it was supposed to have been authenticated by a notary public, and it has no signature.

THE COURT: I will receive it for whatever it is worth.

(Defendant's Exhibit 1 was received in evidence.)

MR. WRIGHT: I have just one other question, Mr. McCoy. I believe you told the Court that —

Withdraw that.

BY MR. WRIGHT:

Q. I believe you told the Court that as a part of your agreement with Mr. Bean to have this United Cab Association, Incorporated transferred to you by virtue of that document, Defendant's Exhibit 1 in evidence, that he was to get free dues. A. That's right.

Q. Can you tell the Court as to whether or not from some time in June of 1967 when Defendant's Exhibit 1 in evidence was executed, did Mr. Bean ever pay any dues? A. He never paid any dues, only with the exception

94 of, I think, it is 2 or 3 times I had a new young lady working in the office, and he slipped a couple \$13.00 checks in there. Why he did it, I don't know. When I discovered it, I told the young lady he was supposed to be deleted from paying dues. She didn't say anything. Next Saturday he brought

the same check for \$11., from there on in — paid only \$11. That was our agreement, that he pay \$11.

Q. That was for how much? A. That was \$11.00 for insurance; he didn't pay any dues.

Q. How much were dues? A. It would have been \$13. every two weeks. It was a dollar a week, every two weeks.

* * * * *

101 Q. All these other cabs that you bought, especially in 1968, you knew that they could not be placed on the street in the name of United, and you had no intention of doing so, did you? A. No. This is what you have to do: In the cab business, you buy cabs — and I talked to Mr. Grecco and them about it — and the only way that I could put these 20 cabs on the street was buying them in the United Cab name and try to build up until I get the 20. And when I get the 20, I was supposed to go back to Mr. Porter and tell him, "I have 20," and immediately painted them over to the Cab Company.

Q. You got 13 of those? A. I may have more.

Q. Admittedly, the United Cab Company had six and one of Mr. Bean was called — A. They didn't have six. It was six men in the company.

Q. They didn't have any? A. They didn't have any. They had 6 members in the United Cab including Mr. Bean, and I have got two of them in Crusader Cab Company now — two men.

Q. With all this going on, you never had any conversation with Mr. Bean about United Cab until this year, is that right? A. Mr. Bean told me, he didn't want anything to do with it. He's got a job. He's been sick; he's going to retire. He's tired of it. He wants nothing to do with it, that anything he can help me, he would. He signed it over to me, was supposed to send the books to me; I took him at his word and we starts from there.

Q. When did Mr. Bean ever have a meeting with you concerning the officership or turning the United Cab Company over to you, and where was that meeting, if it happened? A. I guess I have to repeat it again: 601 Rhode Island Avenue. That's the meeting. I was called for one meeting that he was

in. The next day he was supposed to be there. Mr. Richardson was there; I was there at 4:30 and Mr. Bean was there, and that's all the meeting I have had with Mr. Bean.

* * * * *

123

CROSS-EXAMINATION

* * * * *

131 THE COURT: The Court is prepared to rule:

The Certificate for 500 shares for the Company was owned by Mr. Bean, and is still owned by him. He never transferred title to Mr. McCoy and Mr. McCoy never had authority to exercise the rights of the owner of that stock.

The Court is of the further opinion that there was no meeting on the 23rd of June 1967, as alleged, under purported minutes. And the Court is of the further opinion that the alleged minutes tendered in evidence do not reflect meaningfully anything that took place at the meeting, if one was held; and in addition to that, the Court is of the opinion that no such meeting on June 23rd, 1967 could lawfully be held under the circumstances of this case.

Accordingly, the Court is of the opinion that the plaintiffs are entitled to the relief which they seek, and the reports which they tendered to the Superintendent of Corporations should be received for filing.

I will sign an order accordingly.

I will request counsel for plaintiffs to submit to the Court proposed Findings of Fact and Conclusions of Law and a judgment, is that clear?

* * * * *

ORDER

This cause coming on for a hearing at this term of Court upon the amended complaint for a declaratory judgement and injunctive relief, and the answer and counter-claim thereto, and counsel for the respective parties having been heard, the Court finds as matters of fact:

1. That the plaintiff John H. Bean, Sr., was and still is the owner of a certificate of 500 shares of stock of the United Cab Association, Inc.

2. That said plaintiff never transferred title to said stock to the defendant Frederick B. McCoy and said defendant, McCoy never had authority to exercise the right of ownership of the said stock.

3. That the plaintiffs, Proctor E. Butler, John H. Bean, Sr., and G. Lawson Clark are the duly elected officers of the United Cab Association, Inc. and that their action was in fact within the limits of authority of the articles of incorporation of the said corporation.

4. And the Court further finds that no such meeting of the United Cab Association on June 23, 1967, was lawfully held on said date, as alleged by defendant McCoy and that the alleged minutes and other documents tendered in evidence of such meeting, by defendant McCoy, was not in fact valid minutes of the United Cab Association, Inc.

Wherefore the Court concludes as a matter of law, that plaintiffs are entitled to the relief sought herein. Accordingly, it is by the Court this 13th day of January, 1969,

ORDERED: That plaintiffs Proctor E. Butler, John H. Bean, Sr., and G. Lawson Clark be, and are hereby, declared to be the duly elected officers of the United Cab Association, Inc.

It is the further ORDER of this Court that defendants Frederick B. McCoy, Oliver A. Richardson, Jr. and Richard L. Harris are hereby permanently enjoined, individually and collectively, from conducting business, or in any manner interfering with the operations of the United Cab Association, Inc.

It is the further ORDER of the Court that the Superintendent of Corporations for the District of Columbia, Alfred Goldstein, be and hereby is, directed to rescind the revocation of the articles of incorporation of the United Cab Association and to reinstate the said articles of incorporation with the powers thereunder and to receive and file the annual reports tendered by the plaintiffs, Butler, Bean and Harris.

It is further ORDERED that the defendants counterclaim be and hereby is dismissed.

/s/ _____
J U D G E

[Certificate of Service]

ORDER AMENDING FINAL JUDGMENT

It is, this 20th day of February, 1969,

ORDERED that the final judgment entered herein on the 29th day of January, 1969 be, and the same is hereby amended to include the following additional provision:

The equities in the several taxicabs acquired by the defendants and now titled in the United Cab Association, Inc. are declared to be in the defendants, and said defendants are authorized to take such action as is necessary to transfer title to said taxicabs from the name of United Cab Association, Inc., and the plaintiffs herein shall join in such action as may be appropriate to accomplish this result.

/s/ JOSEPH C. M. GANAGHY
JUDGE

NOTICE OF APPEAL

Notice is hereby given this 17 day of March, 1969, that the Order Amending Final Judgment in the above Captioned matter is hereby appeals to the United States Courts of Appeals for the District of Columbia from the judgment of this Court entered on the 20 day of February, 1969 in favor of the Plaintiff against said Defendant

/s/ **FREDERICK M. McCOY**, *pro se*

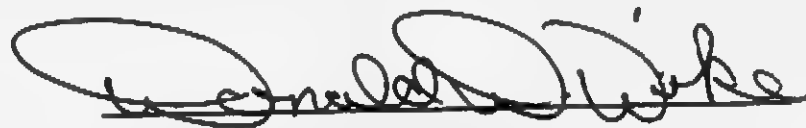
AFFIDAVIT OF ATTORNEY,
R. LOGAN HOLLOWELL

District of Columbia, ss:

R. Logan Hollowell, being first duly sworn according to law deposes and says that he was the attorney for the United Cab Association, Inc. from its inception, that there never was any stock issued by the said corporation, that the meeting held at 1513-P-Street, N.W., among, Messrs. Bean, Butler and Clark, he informed Mr. Clark where to go and obtain a stock certificate, and that in pursuance of the said advice Lawson Clark purchased the same, that your affiant was present at all meetings held by the United Cab Association, Inc., and knows of his own personal knowledge that prior to the 1st day of May, 1968, no stock was held or issued by the United Cab Association, Inc.


R. Logan Hollowell

Subscribed and sworn to before me this 13th day of August, 1969.


Notary Public
Commission expires
6-30-70

No. 22,986

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PROCTOR E. BUTLER,
JOHN H. BEAN, SR.,

and

G. LAWSON CLARK,

No. 22083
No. 22986

Appellees

v.

ALFRED GOLDSTEIN
FREDERICK M. McCOY
RICHARD L. HARRIS
OLIVER RICHARDSON

Appellants

Appeal from the United States District Court
for the District of Columbia Circuit

BRIEF FOR APPELLEE
AND APPENDIX

JAMES C. NEWTON, Esquire
1934 - 13th Street, N. W.
Washington, D. C. 20001



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STATEMENT OF ISSUE INVOLVED

The real issue raised by this appeal is:

1. Whether a judgment on an issue of fact rendered by the United States District Court for the District of Columbia is subject to reversal absent a showing of an abuse of judicial discretion by the lower court.



STATEMENT OF THE CASE

Appellees herewith adopt by reference, Appellants statement of the case.

FACTS RELEVANT TO ISSUE OF REVIEW

The appellees instituted suit in the District Court against the appellants seeking declaratory judgment and injunctive relief.

This cause came on for trial in the Court below on Monday, January 13, 1969, at 10:00 o'clock A M. The appellees below called to the witness stand, one Richard L. Harris, appellant, who, upon being duly sworn testified:

That he never became an officer in the United Cab Association.

That he took part in no meetings in reference to the United Cab Association.

That to his knowledge he never held office in the United Cab Association.

That he never signed papers relative to the United Cab Association (TR. 47, 48).

Thereafter, appellees called to the witness stand, one Oliver A. Richardson, appellant, who upon being duly sworn testified:

That he was associated with appellant McCoy only in capacity with Crusader Cab Company and Dixie Cab Company (TR 49).

That after appellant McCoy recovered from an illness, he (Richardson) had no further interest in United Cab Association or anything like it.

That appellant Richardson participated in no formal meetings in reference to United Cab Association.

That on some occasions, Appellant Richardson never took part in informal discussions about United Cab Association when he knew that this association was being discussed.

That to his knowledge, these informal discussions only involved the strength or weakness of United Cab Association (TR. 51).

That he was never duly elected as an officer in the United Cab Association (TR. 52).

That upon learning that United Cab Association was under-strength to operate as a fleet, he was no longer personally concerned with it (TR. 53, 54).

That appellant Richardson never acted as president of United Cab Association (TR 54).

That he recommended to appellant McCoy that Crusader Cab Company show no further interest in the United Cab Association.



That on cross-examination, appellant Richardson further insisted that after June 1967, when Mr. McCoy recovered from his illness, he had nothing to do with United Cab Association (TR. 59).

That further on cross-examination, appellant Richardson that no formal meeting called by United Cab Association was ever attended by himself, Mr. Harris or Mr. McCoy or Mr. Bean (TR. 62).

That he never attended any meeting at the office of Mr. Hollowell of the Public Service Commission in reference to the United Cab Association (TR 63).

ARGUMENT

- I. Whether a judgment on an issue of fact rendered by the United States District Court For The District of Columbia is subject to reversal absent a showing of an abuse of judicial discretion by that Court.

We submit that all judicial precedent, wisdom, and intelligence dictate that this issue has always been and, prudence dictating, always will be answered negatively. If one area of jurisprudence is more heavily weighed to this conclusion, it is the area dealing with judicial discretion. Upon this, we submit, rests the very foundation of sound judicial integrity, strength, and experience.

It is easily reflected that under constitutional and statutory provisions the propriety of a court judgment is a matter vested solely in the discretion of the Court and its determination should not be disturbed unless there is a clear abuse of discretion.

This is, however, not to imply that there aren't certain moral and judicial guide lines on a court's exercise of discretion, which is reflected in Allen v. Allen, 165 P2d 872 when the court there declared:

Judicial discretion is the term applied to the judgment of the Court when, in absence of statute or other positive law and there is no fixed rule by which the Court's judgment must be guided, the Court's ruling or decision results from that which under the circumstances appears right and equitable.

The instant dictates a factual issue and the testimony therein reflects this. Moreover, the very term "discretion" implies the absence of a hard and fast rule which leads us to conclude that the establishment of a clearly defined rule would be the end of discretion. Norris v. Clinksc4les, 25 S.E. 797.

And yet discretion should not be a ward for arbitrary will or unstable caprice. Nor should judicial discretion be as Lord Coke pronounced it; a crooked cord; but rather, as Lord Mansfield defined it,; the exercising the best of their judgment upon the occasion that call for it; adding that 'if this discretion be wilfully abused... it ought to be under control of this Court.'
Rex v. Young, 1 Burrows 560. Also see Appendix attached hereto.

The appendix attached hereto will show that the Courts discretion in the instant case was not a capricious or arbitrary discretion, but an impartial discretion -- after hearing all testimony adduced at trial -- guided and controlled in its exercise by fixed legal principles -- a legal discretion exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice. Harris v. Alcoholis Beverage Control Appeals Board, 400 P2d 745.

Further submitting to the Courts perusal, that although the courts discretion with respect to truth and veracity in a factual issue such as this, it is bound to exercise legal discretion as defined above and as the appendix dictates.

Mr. Chief Justice Marshall in Osborn v. Bank of the United States. 22 U.S. 738, stated:

Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a course prescribed by law; and when that is discerned, it is the duty of the Court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or in other words, the will of the law.

Further, as indicated above and as generally understood, judicial discretion includes the propriety of granting appropriate relief, and therefore all rules in equity must necessarily be sufficiently elastic to do justice in a particular case. Brown v. Hecht Company, 49 F.Supp. 528. The testimony set forth in the appendix herein provides the legal and judicially proprietary guidelines for the lower court's judgment and appellants have not shown reasons to question it.

When appellants refer to the case of National Beneficial Insurance Co. v. Shaw-Walker Co., they failed to point out that the court in that case felt it lacked jurisdiction to rule pro or con. Jurisdiction is not an issue here. But, even in appellants case, the court stated that its "jurisdiction would lie or its discretion would be justified if sustained on any other grounds," 111 F.2d 499.

Consequently, without ever entering the realm of speculation, which in any consideration of discretionary action is difficult to avoid, we can with reasonable certainty state the apparent determination of the trial court, which we submit is to rule with

just regard to what is right and equitable under these circumstances and the law governing same as reflected by the testimony within the appendix attached hereto.

Appellants contend the maxim of falsus in uno, falsus in omnibus is applicable here, but, we submit that this very general rule of law is applicable until and unless the testimony of the witness is corroborated by other proof, *Larsen v. Webb*, 58 S.W. 2d 967. The testimony in the instant case is corroborated by the appellees among themselves and by the appellant's testimony as indicated in the attached appendix.

CONCLUSION

All premises considered, the judgment of the Court below should and must be affirmed as same and exercised in conformity with the facts presented, in the spirit of the law applicable thereto and to the necessary end of awarding justice.

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DIRECT EXAMINATION

BY MR. NEWTON:

Q Would you please state your full name and your address?

A Richard L. Harriss, 5115 Illinois Avenue, Northwest,
Washington, D. C.

Q Mr. Harris, are you acquainted with Mr. Bean, first of
all?

A Yes.

Q And are you acquainted also with the facts concerning
the United Cab Association, Incorporated?

A To some extent, yes, sir.

Q Do you know about a meeting that took place in June of
1967 of the United Cab Association?

A I don't recall any meeting that I took part in.

Q I'm sorry. What was the last portion of your statement?

A I don't recall any meeting that I took part in.

Q So, you did not a part.

MR. WRIGHT: I object.

THE COURT: He has answered your question.

BY MR. NEWTON:

Q Do you know anything about the affairs of the United
Cab Association?

A Not familiar with United Cab, pro or con.

MR. NEWTON: All right.

MR. WRIGHT: No questions.

BY MR. NEWTON:

Q Were you ever elected vice-president of the United Cab Association?

A Not to my knowledge.

Q Did you ever sign any papers of any sort?

A No papers.

Q So that, you did not sign the papers that were presented to the Superintendent of Corporations?

A I haven't ever signed any papers dealing with United Cab.

Q And no nothing about it?

A That's right.

MR. NEWTON: That is all.

THE COURT: Mr. McCULLOCH, did you have any questions?

MR. McCULLOCK: I have no questions, your Honor.

MR. NEWTON: I would like to call Mr. Oliver Richardson.

(Witness excused.)

Thereupon,

OLIVER A. RICHARDSON

was called as a witness on behalf of the Plaintiffs, and having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NEWTON:

Q Would you please state your full name to the Court.

A Oliver A. Richardson, Jr.

Q What is your address, Mr. Richardson?

A 1429 Clifton Street, Northwest, Washington, D. C.

Q Mr. Richardson, you are associated with Mr. McCoy?

A I am.

Q In what capacity?

A With Crusader Cab Company and Dixie Cab Company.

Q Do you know about the matters concerning United Cab Association?

A I know something about it, yes.

Q Were you associated with Mr. McCoy in any manner concerning United Cab Association?

A Yes.

Q I want to know, and would you please tell us in what capacity you served--- Strike that. How were you associated in the affairs of United Cab Association?

A Well, during the last part of May or early part of June, Mr. McCoy---

THE COURT: What year?

THE WITNESS: '67. -- Mr. McCoy had been sick, and at that particular time I was acting as president of the company.

I was running the company, so---

THE COURT: You are now referring to Crusader and Dixie?

THE WITNESS: That's right, to Crusader and Dixie. I'm sorry. I was in charge of the company in this time, during his illness; so the question came up about United Cab being under strength. So, I thought it would be a good idea if we could get the cab company and rebuilt it, so it was I who first called Mr. Bean and I spoke to Mr. Bean about it. And Mr. Bean at that particular time indicated that the company had approximately 13 or 14 cars. This I was willing to go along with the project. I was going to help, you know, put the remaining cars on the street, build it up to 20 that's required. So I went down to Public Service Commission and I inquired of Mrs. Dawson how many cars they actually had. She said at that particular time there was only six or seven that was actually insured. So, sometime in June, Mr. McCoy came back to the office, and I later turned the matter over to him. I no longer had no further interest in it or anything, nothing like that. But I had the whole idea of it. So, that's about my knowledge of it.

Q So, there was no formal meeting then between yourself and Mr. Bean on the matter?

A There was this: I spoke to him on the phone and he came by the office a couple of times.

Q Were you present at any meeting at which Mr. McCoy and Mr. Bean discussed the matters of your idea?

A Yes.

Q When was that or what was that?

A I guess a couple of times Bean came by the office.

All these meetings were informal, just sitting talking; no specific letters or anything sent out, "We're going to have a meeting" this particular date or something like that. Mr. Bean would come by and they would, you know, talk about it.

Q You don't recall one of those times, that is, the approximate date of one of those times?

A Well, one time was near the end of June, maybe on the 24th, maybe the 23rd.

Q Other than those informal discussions, were you ever in a meeting with Mr. McCoy and Mr. Bean?

A No, not directly -- maybe indirectly, but not directly. By that I mean, I might have been in the office on other business, and Bean was there talking to Mr. McCoy about something.

Q You would have been engaged in other duties in the office?

A Right. Right.

Q But not in the specific meeting?

A Not necessarily, no. It's not a formal meeting. During the time we may have been talking, somebody came in. I may have left off, or something.

Q You might have even gone out while they were talking, is that right?

A Right.

Q Or might not have even been there when they began?

A On some occasions, I probably was not. I don't know about all the meetings.

Q Mr. Richardson, then in respect to the officership of the United Cab Association, you were never duly elected as an officer of the corporation, were you?

A Never duly elected, no.

Q What other way could you be elected?

A I was acting as an officer of United through Crusader Cab Company, in that Crusader had an interest in United, when United became a subsidiary -- I suppose it would become a subsidiary of Crusader Cab Company.

Q Did you ever sign any papers specifically with regard to United Cab Association?

A Yes, I did.

Q What papers were they?

A They were papers to be sent to Public Service Commission.

Q And when was that?

A This was, I think, during the period of '68. I don't remember the specific month.

Q Could it have been May?

A Of '68?

Q Yes.

A It may have been. I don't know specifically.

Q Specifically May 13, 1968?

A It may have been.

Q Were you aware at the time that Mr. Bean had sent down, and other had sent down, a set of papers, tax papers and so on, concerning the United Cab Association?

A I learned of that 'during, I think it was after, a little after I learned that the corporation was being contested.

Q You learned of it afterwards. But did you know, were you not informed that the papers that had been tendered by the other set, or group of persons, had been tendered to the Superintendent of Corporations on May 8th?

A No, I did not.

Q So, other than that, then-- I don't know how to say or what -- What was your relationship with the United Cab Association? Did you contend that you were an officer or director?

A I was contending that I was perhaps an acting officer.

Q Acting officer?

A Yes, at that particular time -- prior to the time I knew it was being contested. After that, the company was too low --
Rephrase: After I learned the company didn't have enough cabs, so Crusader Cab Company would be interested in building it, I was no longer concerned with it personally.

THE COURT: Do I understand it that you say you were acting for United at the time when Mr. McCoy was ill?

THE WITNESS: No, running the Crusader Cab Company and Dixie, acting as president during his illness.

THE COURT: But you were not acting as president of the United Cab---

THE WITNESS: Not acting as president of United.

BY MR. NEWTON:

Q Let me inquire: When did you find out that United did not have but six or seven cabs?

A It was perhaps in June. I don't remember the specific date. I went down to the Public Service Commission and I asked Mrs. Dawson about it.

Q That is June of '67?

A I'm sorry -- '67, sometime in '67/

Q That was at the beginning of the discussions and so on?

A Right.

A And at that time, I believe--- What was your attitude toward United after that?

A Well, after that, I no longer had any interest in it.

Q Did you discuss that matter with Mr. McCoy?

A Indirectly. I have indicated that we could not build the company up and I think it was he who suggested that we just have the remaining of them that they had, painted Crusader Cab Company.

Q When you said that "we should have no further interest in it," you were speaking of what group should have no further interest in it?

A Crusader Cab Company -- the cab company, not individually.

Q That the Crusader Cab Company would have no further interest in United?

A Should have no further interest.

Q Do you know whether or not that was Mr. McCoy's attitude also?

A No, it was not.

Q From that point on, you had nothing else to do with United Cab Association.

A No, I did not.

Q And that was in June of 1967?

A '67, right.

Q Since that time, did you ever sign any papers respecting the affairs of United Cab Association officially or unofficially?

A Well, I may have signed papers as an officer of Crusader Cab Company.

Q But you don't recall?

A I don't recall. Specifically, I don't recall if I did or not. If I signed papers, I signed them as an officer of Crusader.



CROSS EXAMINATION OF OLIVER RICHARDSON

BY MR. WRIGHT:

A About how many of these meetings in June concerning United Cab Association, Inc. would you say Mr. Bean was present at, if you have any recollection?

A Perhaps twice; maybe twice he came by.

Q Are you completely satisfied from your recollection that he did at least attend one or two of such meetings concerning United Cab Association in June of '67?

A You use the word "meeting" and it may have a different meaning to one than others. You're not suggesting it was a formally-called meeting which was presided over by a chairman.

MR. WRIGHT: I wonder if I might ask the witness about that.

THE COURT: He said these were very informal discussions. You may ask him.

BY MR. WRIGHT:

Q Do you know whether any so-called formal meetings were ever called by the United Cab Association, at which either you or Mr. Harris or Mr. McCoy or Mr. Bean were in attendance?

A Called by United?

Q Yes, by either Mr. McCoy or any one of you in Crusader who were interested in United Cab Association?

A No.